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	DS-00	DHSE-00	EUR-00	FBIE-00	VCI-00	H-00	TEDE-00
	INR-00	IO-00	L-00	MOFM-00	MOF-00	VCIE-00	NEA-00
	NSAE-00	ISN-00	NIMA-00	GIWI-00	ISNE-00	DOHS-00	FMPC-00
	SP-00	SSO-00	SS-00	NCTC-00	SCRS-00	DSCC-00	PRM-00
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FM AMEMBASSY ISLAMABAD  
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AMEMBASSY NEW DELHI  
AMEMBASSY LONDON  
AMCONSUL LAHORE  
AMCONSUL PESHAWAR  
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SUBJECT: NATIONAL RECONCILIATION ORDINANCE MAY BE THE  
GOVERNMENT'S ACHILLES' HEEL

REF: ISLAMABAD 1784

Classified By: Ambassador Anne W. Patterson, Reasons 1.4 b and d.

11. (C) Summary: The Supreme Court's decision to return the National Reconciliation Ordinance (NRO) to the National Assembly for action has left the Pakistan Peoples Party (PPP) government with a Hobbesian choice between taking public responsibility for passage of this very unpopular legislation or allowing the NRO to lapse and trusting in the court's upholding of established legal principles. The PPP leadership is divided on the issue, based largely on their level of trust in Chief Justice Iftikhar Chaudhry's capacity for restraint. Some senior leaders within the PPP worry, however, that if President Zardari chooses to place his trust in the Chief Justice's respect for legal precedence, he will be sorely disappointed and may open a door for Pakistan Muslim League - Nawaz (PML-N) leader Nawaz Sharif to use his alliance with the Chief Justice to topple both President Zardari and the PPP government. End Summary.

12. (C) The Supreme Court on July 31 gave the Government 120 days to either pass the National Reconciliation Ordinance (NRO) through Parliament or allow it to lapse. The NRO -- a Musharraf era ordinance through which numerous senior Pakistan Peoples Party (PPP) leaders, including President Zardari, received legal amnesty and were, therefore, made eligible for elected office -- has been the subject of considerable public criticism and is generally viewed as publicly unpopular. The PPP and Musharraf's own Pakistan Muslim League (PML) had originally chosen to pass the NRO through Presidential order rather than through Parliament specifically to avoid a nasty public debate on the legislation that would have damaged their public reputation. The Supreme Court's verdict has left the PPP with two options either taking the public criticism that parliamentary passage would entail or risking invalidation of the NRO and possibly the ability of senior leaders, including Zardari, from holding office.

13. (C) The PPP is divided on the issue of which option to pursue. Attorney General Senator Latif Khosa, who authored

the ordinance for the PPP, and Senate Chair and former Law Minister Farook Naek are pressing President Zardari not/not to place the NRO before the Parliament. They fear that the political fall-out from debate on and passage of the NRO, which the Pakistan Muslim League - Nawaz would certainly exploit, would be greater than any legal ramifications of the NRO's expiration. They point out that the legal benefits of the NRO have already accrued to all those who could receive them and that under Pakistani legal precedence once such legal benefits are received they are considered "past and closed transactions" that cannot be revisited by any court. Khosa and Naek assert that there is no basis under which Chief Justice Iftikhar Chaudhry's court could reopen such cases and invalidate the eligibility of PPP leaders, including Zardari to hold office. Interior Minister Rehman Malik, who appears to share Khosa and Naek's views, has earlier told post that even if the charges against sitting Ministers and the President were reopened, they could continue to hold office while the legal cases were ongoing in accordance with past precedent.

14. (C) The opposite camp is led by PPP Parliamentary Affairs Minister Babar Awan, who pressed PolCouns for the USG's intervention with President Zardari on this issue. Awan concedes that if the Supreme Court follows past precedent Naek and Khosa's legal understanding of the situation is probably correct. Awan equally concurs with Malik's assertion that if precedent is followed, an individual can hold public office while criminal charges are being pursued. Awan, however, differs with his colleagues on the question of whether the Supreme Court and its current strongly anti-Zardari, pro-Nawaz Chief Justice would actually adhere to precedent. In his conversation with PolCouns, Awan pointed to several instances in the Musharraf period and since the court's restoration, where it has rejected precedent and charted its own way forward in order to assert control or embarrass politically the executive branch. Awan is convinced that the Chaudhry court is prepared to use the NRO to invalidate the election of President Zardari and numerous other sitting PPP and Muttahida Quami Movement (MQM) members of the Senate and the National Assembly. According to Awan, this is the one weakness that could prevent the PPP government and President Zardari from fulfilling its full five-year tenure, and Nawaz will utilize the Chief Justice to exploit this weakness. Awan argued that whatever the political cost, it would be foolish of the government to gamble on the Chief Justice's restraint and not take the NRO to parliament, where the PPP and MQM combined had more than sufficient votes to have it passed.

15. (C) Comment: PPP reliance on Chief Justice Iftikhar Chaudhry and his hand-picked court's capacity for judicial restraint and respect for legal precedence may well be a risky strategy. There is no doubt of Justice Chaudhry's personal animosity for President Zardari and his desire to embarrass both Zardari and the PPP government, as he has repeatedly shown in his anti-government rulings. While Chaudhry is not fully under Nawaz Sharif's control, we assess that he would be amenable to working with Nawaz in this instance to disqualify Zardari and other elected PPP and MQM leaders, laying the groundwork for possible early general elections and new presidential elections. End Comment.

PATTERSON